



**Gladys Berejiklian MP**  
Premier of New South Wales

Ref: A2729656

Dr Peter Boxall AO  
Chairman  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
HAYMARKET POST SHOP NSW 1240

Dear Dr Boxall,

I am writing to you in relation to pricing regulation of the electronic conveyancing market in New South Wales. Pursuant to section 12A of the Independent Pricing and Regulatory Tribunal Act 1992, I am referring the matter to the Tribunal for investigation and report.

The NSW Government has mandated that all mainstream property transactions in New South Wales must be settled electronically by 1 July 2019.

In light of this approaching deadline, the Government intends to review and identify appropriate regulatory settings for the fees charged for the provision of eConveyancing services in NSW to ensure they are fair and transparent for all parties.

The Tribunal is requested to conduct a review with the final report to be completed and provided to the Minister for Finance, Services and Property within nine months. The proposed terms of reference are attached.

Yours faithfully,

**Gladys Berejiklian MP**  
Premier

CC: The Hon Victor Dominello, Minister for Finance, Property and Services

## TERMS OF REFERENCE

### Pricing regulation of Electronic Conveyancing Network Operators in NSW

I, Gladys Berejiklian, Premier of New South Wales, under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992 (the Act)*, request the Independent Pricing and Regulatory Tribunal (**Tribunal**) to investigate and report on an appropriate pricing regulation framework for the provision of electronic conveyancing services in New South Wales in accordance with this Terms of Reference.

#### Context

Electronic conveyancing is a system of settlement of real property transactions via an Electronic Lodgment Network (**ELN**). An entity that operates and administers an ELN is known as an Electronic Lodgment Network Operator (**ELNO**).

Currently the national regulations require the sole ELNO, Property Exchange Australia (**PEXA**), to determine its fees according to a publicly available, equitable and transparent pricing policy. However, the extent to which this policy properly reflects market conditions has never been tested. State and national regulators have not assessed PEXA's approach to introducing its original fees.

Additionally, the current fee regime may be reasonable while paper conveyancing as an alternative to electronic conveyancing provides competitive pressure on PEXA's prices, but such competitive pressure disappears when paper conveyancing is no longer an alternative. In NSW, paper conveyancing for some property and finance dealings has already been removed, and by 1 July 2019, all mainstream property dealings are mandated to be electronic. The NSW government intends to review and identify appropriate regulatory settings for the fees charged for the provision of eConveyancing services to ensure they are fair and transparent for all parties.

The NSW government recognises that electronic conveyancing is a national reform and strongly supports a nationally consistent regulatory regime. Although the IPART review and report will only consider pricing in NSW, the NSW government intends to share IPART's findings with other jurisdictions to support its overall aim of a nationally consistent pricing framework.

#### The task

IPART is requested to:

- a) Undertake a market review and consultation process on the current state of the electronic conveyancing process;
- b) Recommend an appropriate pricing regulatory framework, such framework to include a maximum price for the provision of services and a methodology for making annual adjustments to this maximum price;

- c) Consider the appropriate timeframe in which any pricing framework should be adopted and any transition measures; and
- d) Undertake annual market reviews and thereafter advise whether the pricing framework needs to be adjusted in line with changing market conditions.

In determining an appropriate pricing framework, the Tribunal should have regard to the following matters:

- a) Protection of consumers from potential pricing abuses due to the current status of electronic conveyancing as a single-operator market;
- b) The relevance of additional ELNOs potentially entering the market over the next 1-5 years, and how this should be reflected in the pricing framework;
- c) The importance of undertaking the review in an open, fair and robust manner to ensure public confidence in the process and promote the NSW approach as a model for other jurisdictions;
- d) The extent to which PEXA has invested capital to support its ELN in its capacity as the initial and sole ELNO; and
- e) Any other matter the Tribunal considers relevant.

### **Process and timeframe**

The Tribunal is required to consult with the public on these terms of reference. The Tribunal will also consult with the public in undertaking its review, including through releasing a draft report, and provide a final report to the Premier within ten months of receiving the terms of reference. The final report will be made publicly available.

The Finance, Services and Innovation cluster will meet the agreed costs of the review.